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Supreme Court, U.S.
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No. 92-186

In The
SUPREME COURT OF THE UNITED STATES
October Term 1992

CATHERINE BARBER & AS EXECUTRIX,
Petitioner

versus

SOMERVILLE HOSPITAL,INC.& ASSIGNS;

DR.A.H.FINE,
INTERNAL MEDICINE SERVICES,INC.& ASSIGNS;

VISITING NURSE,INC.& ASSIGNS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT OR OTHER

PETITIONER'S REPLY TO "BRIEF OF RESPONDENTS,SOMERVILLE HOSPITAL AND ALBERT H. FINE,M.D. IN OPPOSITION.."

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1992

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No. 92-136

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1992

CATHERINE BARBER & AS EXECUTRIX,
Petitioner

versus

SOMERVILLE HOSPITAL,INC.& ASSIGNS;
DR.A.H.FINE,
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Petitioner,Catherine Barber,respectally requests this Court to grant the Petition for Writ of Certiorari and reject the arguments in the opposition brief that contains major errors, omissions,distortions & alterations beginning with the caption on the cover readily compared with the correct petitioner's caption & signals the further

errors & ommissions to mislead the court. Material omissions on the cover and page 1 were the punctuation of the comma "," after Dr.A.H.Fine & the omission of "and assigns".(Dr.Fine is only one assign.) The petitioner considers these deliberate alterations as violations of Rule 11.

The default issue was not argued and,therefore, waived. The response of the hospital administrator to discovery was that he had no knowledge of the requests apparently including the hospital's guidelines for a DNR order (appendix of petition pp.29a-34a); & is either gross incompetence,perjury, other:, Rule 11 for counsel, and the issue is not argued and,therefore,waived.

Counsel's Statement of the Case on page 1 contains an admission of a judicial error; Judge Sandra Hamlin knowingly allowed "arguments of counsel"

at the MedicalMalpracticeTribunal where the plaintiff only makes an offer of proof.

Most of the hospital opposition brief is about the Medical Malpractice Tribunal but counsel failed to address the entire issues & errors of law; he failed to establish that this is a tribunal malpractice case under M.G.L.231§60B and,therefore,waived that basic issue. (Constitutional rights, assault etc.are not tribunal issues.) If,however, the court considers it a tribunal case,the errors of law (allowing argument by counsel,extra-statutory fourth member to the tribunal,non-acceptance of DNR order in writing,witness testimony of petitioner, treatises etc.admissible in evidence (Ch.233§79C),records of fever before and at death) would necessitate another hearing. (And,discovery before the hearing should not only be

allowed but also be mandatory.)

Moreover, counsel did not address the petitioner's questions as stated, and, therefore, waived the issues. His additional questions in the opposition are peripheral and irrelevant to the facts of this case. Counsel also did not "address any perceived misstatements of fact or law set forth in the petition which have a brearing on the question of what issues woyuld properly be before the Court is certiorari were granted"(SCt Rule 15.1) because there are no misstatemenbts of fact or law in the petition.

The DoNotResuscitate issue not only can be decided but has already been decided at the Supreme Court; the Cruzan case,now common knowledge medicine & law,was never mentioned, nor were the Constitutional issues of due process,equal protection and therefore waived.

As for counsel's fourth question,

the petitioner has been successful in preserving all issues of law (some of which are probably criminal)not only to achieve justice in this case,but also to open an investigation of the Mass.AppealsCourt that should probably be abolished, to investigate the other courts to possible put in receivership, impeach and disbar.

A default is most appropriate,then proceed to discovery (that should include "and assigns"; for assessment of damages.

CONCLUSION

Petitioner requests this Court to grant its Petition and the relief stated therein.

Respectfully submitted,

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